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05/02/01

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1046 U. S. PTO
09/846394



May 2, 2001

BOX PATENT APPLICATION

Commissioner for Patents
Washington, D.C. 20231

Re: Application of **Kayoko YAMAGUCHI and Masaharu NAGAO**
FLAVOR COMPOSITION AND STABLE AND TRANSPARENT DRINK
CONTAINING THE SAME
Our Ref: **Q64290**

Dear Sir:

This is a request for a Continuation-in-Part Application of pending prior Application No. 09/469,161 (Confirmation No. Unknown) filed December 21, 1999 of Kayoko YAMAGUCHI and Masaharu NAGAO entitled FLAVOR COMPOSITION AND STABLE AND TRANSPARENT DRINK CONTAINING THE SAME.

Attached hereto is the Continuation-in-Part Application including the specification, claims and abstract, and an Information Disclosure Statement and PTO form 1449. Also attached is a paper entitled LETTER RE 11/07/00 ACTION IN PARENT, submitted for consideration by the Examiner.

The executed Declaration and Power of Attorney, executed Assignment and PTO 1595 form will be submitted at a later date.

Amend the specification by inserting before the first line the sentence:

→This is a Continuation-in-Part of Application No. 09/469,161 (Confirmation No. Unknown) filed December 21, 1999. → now abandoned

The Government filing fee is calculated as follows:

TOTAL FEE \$710.00

A check for the statutory filing fee of \$710.00 is attached. You are also directed and authorized to charge or credit any difference or overpayment to Deposit Account No. 19-4880. The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16 and 1.17 and any petitions for extension of time under 37 C.F.R. § 1.136 which may be required during the



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entire pendency of the application to Deposit Account No. 19-4880. A duplicate copy of this transmittal letter is attached.

Priority is claimed from December 28, 1998, and July 9, 1999, based on JP Application Nos. Hei. 10-373336, and Hei. 11-195298, respectively. The priority documents were filed in parent Application No. 09/469,161.

A Petition for Extension of Time is being concurrently filed in parent application no. 09/469,161. Therefore, the application is timely filed.

Respectfully submitted,

SUGHRUE, MION, ZINN,
MACPEAK & SEAS, PLLC
Attorneys for Applicant

By: 

Peter D. Olexy, PC
Registration No. 24,513

PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Kayoko YAMAGUCHI, et al.

Continuation In Part Application of
U.S. Appln. No.: 09/469,161

Confirmation No.: Unknown

Group Art Unit: 1761 (Parent)

Filed: May 2, 2001

Examiner: H. Pratt (Parent)

For: FLAVOR COMPOSITION AND STABLE AND TRANSPARENT DRINK
CONTAINING THE SAME

LETTER RE 11/07/00 ACTION IN PARENT

Commissioner for Patents
Washington, D.C. 20231

Sir:

In the parent of the present application, claim 6 was rejected under 35 U.S.C. § 112, second paragraph, as using incorrect Markush language. Corresponding claims 5 and 6 in the present application use proper Markush language.

Claims 1-12 in the parent of the present application were rejected under 35 U.S.C. § 103(a) as being unpatentable over (it is believed that this is the rejection that the Examiner meant to pose) U.S. Patent 4,960,602 Talkington et al. (Talkington) in view of U.S. Patent 5,914,149 Tomida (Tomida).

Applicants would like to offer the following comments on Tomida and Talkington.

In Tomida, a sucrose fatty acid ester is added to a transparent liquid food. However, the object of the invention of Tomida is to use a sucrose fatty acid ester having a high monoester content (93% or more) to prevent precipitation and cloudiness of the transparent liquid food.

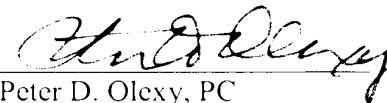
LETTER RE 11/7/00 ACTION IN PARENT
Continuation In Part of
U.S. Appln. No. 09/469,161

The pH of the transparent liquid food of Tomida is stated to be not less than pH 4.5 (Tomida at column 4, line 11), which means weakly acidic to neutral or alkaline. In the Tomida Examples, the straight tea of Example 1 has a pH of 6.5 and the Japanese tea of Example 3 had a pH of 6.8.

According to the Inventors herein, if a sucrose fatty acid ester is added to drinks, etc., the sucrose fatty acid ester precipitates when the drink is acidic (about pH 3.5 or lower). The present invention solves this problem, i.e., precipitation of sucrose fatty acid ester can be prevented by using lysolecithin in combination with the sucrose fatty ester. If the monoester content of the sucrose fatty acid ester is low, the precipitation is further liable to occur. By using lysolecithin in combination with the sucrose fatty ester, it is possible to avoid precipitation of sucrose fatty acid ester even if the monoester content is lowered until it is about 70% by weight.

Such effects are not taught or suggested by Tomida and the present invention is unobvious over a drink composition containing a flavor and a sucrose fatty acid ester as in Talkington.

Respectfully submitted,


Peter D. Olexy, PC
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Attorney Docket No.: Q64290